

REMARKS

Claims 1-54 are pending in this application. Claims 15-41 have been withdrawn. Claim 1 has been amended to recite the use of modified lecithin in solution. Support for this amendment may be found in the application as filed at paragraph [0052]. Claims 42-54 are new. Support for these claims may be found in the claims as originally filed.

Applicants confirm the election of species 1, reading on claims 1-14. New claims 42-54 also read on the elected species 1.

Favorable reconsideration and allowance of this application is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-4, 6, 7 and 9 have been rejected as being anticipated by U.S. patent no. 5,725,630 to Roberts et al. (Roberts). The Examiner alleges that Roberts teaches a method for modifying a plant or plant part such as seeds or young plant by treating the plant with a composition comprising a modified lecithin. However, as amended, claim 1 recites a composition comprising modified lecithin in solution. Roberts discloses the use of a dry fertilizer in which modified lecithin acts as a dry carrier to "absorb the liquid spray" for use as a dry fertilizer. Roberts, col. 8, lines 19-20. Roberts does not disclose the use of modified lecithin in solution.

Claims 2-4 and 6, which depend on claim 1, also now incorporate the limitation of using modified lecithin in solution. As stated above, Roberts does not disclose the use of modified lecithin in solution.

Regarding claim 7, the Examiner states that Roberts discloses treating the roots and leaves of young plants. However, as discussed above, Roberts does not disclose treating the roots and leaves of young plants with a composition comprising modified lecithin in solution.

Regarding claim 9, the Examiner states that Roberts discloses treating young plants before harvest. However, as discussed above, Roberts does not disclose treating young plants before harvest with a composition comprising modified lecithin in solution.

In light of the above amendments and remarks Applicants respectfully submit that claims 1-4, 6, 7 and 9, as amended, are not anticipated by Roberts. Withdrawal of this rejection is respectfully requested.

New claims 42-54 are limited to enzyme-modified lecithin and acetylated lecithin. While Roberts does disclose the use of hydroxylated lecithin as one potential carrier for the dry fertilizer, Roberts does not disclose the use of enzyme-modified lecithin or the use of

acetylated lecithin. Thus, Applicants respectfully submit that Roberts does not anticipate the subject matter of new claims 42-54.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-4, 6-8 and 10-14 are rejected as being obvious over NPL Bulletin of the Sprenger Institute "Brown" in Golden Delicious by Staden (Staden) in view of Roberts.

Regarding claims 1-4 and 6, the Examiner alleges that Staden teaches a method for modifying a plant with a composition comprising a lecithin. However, as the Examiner concedes, Staden is silent regarding the use of modified lecithin, as recited in the present claims. The Examiner goes on to allege that Roberts teaches the use of modified lecithin, making it obvious to one of skill in the art to use modified lecithin as taught by Roberts in the method of Staden.

However, it is well settled law that there must be some reason, suggestion or motivation for one of ordinary skill to combine or modify the references. Further, there must be some reasonable expectation of success to performing said combination or modification. "Both the suggestion and the expectation of success must be found in the prior art, not in applicants disclosure." See *In re Dow Chem. Co v. American Cyanamid Co.* 837 F.2d 469, 473 (Fed. Cir. 1988). As applied to the present case, nothing in Roberts or Staden, either alone or in combination, disclose or suggest any motivation to combine or modify Roberts and Staden to include the use of modified lecithin. Further, nothing in Roberts or Staden provide any reasonable expectation of success from any such modification or combination.

It is also well settled that even minor modifications to chemical compounds can have dramatic effects on the biological activity of the compound. As is clearly stated in the application as filed, unmodified lecithin does not have the same biological activity in plants as modified lecithin (see paragraph [0039]). Therefore, absent a specific suggestion in Roberts or Staden that modified lecithin has the same activity as provided in the present application, Applicants submit that the present claims cannot be considered obvious. In fact, Roberts teaches the use of modified lecithin as a carrier for an active agent, alkanolic acid. Thus, one of skill in the art could logically interpret this to mean that modified lecithin lacks any biological activity of its own. Therefore, Roberts actually teaches away from modifying Staden to use modified lecithin.

Even assuming for the sake of argument that it would be obvious to try using modified lecithin in place of lecithin, nothing in Roberts or Staden, either alone or in combination, discloses or suggests that such a modification has any reasonable expectation

of success for the same reasons discussed above. See *In Re O'Farrell*, 7 USPQ2d 1673 (Fed. Cir. 1988).

Regarding claim 5, the Examiner states that even though Staden and Roberts are silent regarding the use of acetylated lecithin, it would have been obvious to one of skill to employ acetylated lecithin as the preferred lecithin. Regarding claims 7 and 8, the Examiner states that Staden as modified by Roberts, teaches modifying a fruit. Regarding claim 10, the Examiner states that Roberts teaches exposing the plant to the composition after it is harvested from the plant. Regarding claim 11, the Examiner states that Roberts teaches treating the plant by dipping the plant or plant part into the composition. Regarding claims 12-14, the Examiner concedes that Staden and Roberts are silent about the concentration of the lecithin. The Examiner goes on to allege that it would have been obvious to one of skill to use a modified lecithin concentration of about 1ppm to 20,000ppm or 10ppm to 10,000ppm or 25ppm to 5,000ppm.

However, all of claims 5, 7, 8, 10, 11 and 12-14 incorporate the limitations of amended claim 1, specifically, that the modified lecithin is in solution. Therefore, for the same reasons discussed above, Applicants respectfully submit that none of claims 5, 7, 8, 10, 11 and 12-14 can be obvious in view of Roberts and Staden.

A petition for one-month extension of time is included. However, the Commissioner is also authorized to charge any additional fees under 37 CFR §1.17 or 37 CFR §136(a)(3) that may be due on this application to Deposit Account 17-0055.

Respectfully submitted,

KEITH ROWLEY

Date: November 2, 2006


Ann E. Rabe, Reg. No. 56,697
Quarles & Brady, LLP
Attorney for Applicant
411 East Wisconsin Avenue
Milwaukee WI 53202
P) 414/277-5613